

# CCOC COMMUNICATOR



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## How to Properly Regulate Leases in Your Community

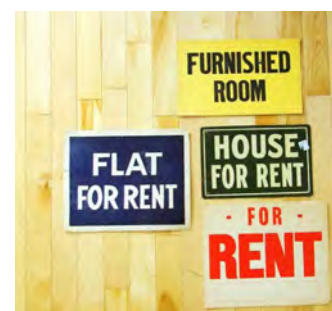
By Nicole Williams, Esq.

Homeowners in common ownership communities are always concerned about renters in their community. Those who own homes tend to feel that renters do not have the same commitment to the value and good health of the neighborhood. Condominium owners also worry about the effect of rentals on their association's ability to obtain FHA certification. Because of these concerns, the boards of directors want to know how they can properly regulate leases in the community. Since Maryland law does not specifically address leasing within community associations, they must first look to their own governing documents for guidance on this issue.

When you review your association's governing documents, you must first look for any sections that allow the association to restrict leasing or to adopt rules and regulations governing rentals. Since a lease restriction is a use restriction, rules limiting rentals must be authorized by the Declaration or the Bylaws, or they will not be valid and enforceable. In such a case, the association will have to amend its governing documents to give the association the legal authority to regulate leasing and to adopt the necessary rules and regulations.

What kind of language is sufficient authority for the regulation of leases? The Declaration or Bylaws should specifically grant authority to regulate or prohibit rentals. General language such as "the Board shall have the authority to make and enforce reasonable rules and regulations governing the conduct, use and enjoyment of the Lots, Dwelling Units and Common Areas" is probably *not* sufficient.

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## An Heirloom Shines Again

In the shadow of one of the County's best known landmarks—the Mormon Temple on I-495—lies a community that is as beautiful, far older and more architecturally diverse. Yet it is unknown to most County residents. This is the area called Forest Glen. Dating back to 1887, the community was originally constructed as a hotel, became a finishing school for young ladies, was transformed into an Army hospital, and now is home to some of the County's newest and most unusual condominium and homeowner associations.

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**"There is no single definition in the covenants or the law as to what is a 'family.'"**

## Maryland Court Limits HOA's Right to Restrict Rentals to "Single Families"

Maryland's Court of Special Appeals has ruled that when an HOA's covenants limit the use of a house to a "single family" but do not define the word "family," the HOA cannot prohibit the rental of the house to people who are not related by blood, marriage or adoption. In this case, the Court held that the HOA could not prevent the landlord from renting the house to 3 unrelated college students.

The covenants stated that no part of a house could be used "except solely as a single family residence." The HOA argued that this meant that all residents in the house had to be related by blood, marriage or adoption. But the Court disagreed on the grounds that there was no single definition in the covenants or the law as to what is a "family." The Court noted decisions and laws from other States that defined "family" in such a way as to include groups of nuns or priests, group homes, and a group of people who lived together as a single unit. Indeed, the

local zoning code defined a "family" as two unrelated people living together as a "single house-keeping unit." Since the meaning of the word was not clear, it would be interpreted against the party trying to enforce it, in this case the HOA.

**It is not clear how associations should respond to this decision.** Normally, the board of directors has the right to interpret an association's governing documents and its interpretations will be upheld if they are reasonable even if there are other possible interpretations. The Court did not say if the association could resolve the issue by formally adopting a written rule on the subject, or if it were necessary for the association to amend its declaration of covenants, which is a far more difficult project. Associations should consult their attorneys for advice on this matter.

**The case is *South Kaywood Community Association v. Long*, No. 691 (November 26, 2012).** It is a reported decision, which means it can be cited as precedent in other cases.

## HOA Cannot Reject Application to Rent Accessory Apartment on Grounds that Ban All Rentals

A CCOC hearing panel overturned the decision of an HOA's board of directors to reject a homeowner's application to rent out part of his home to another family. The panel ruled that the board exceeded its authority.

The HOA's covenants stated that "No portion of a dwelling unit may be leased or rented unless the prior written approval of the Board of Directors is obtained." The owner constructed a basement apartment in his home for the use of his in-laws, and when they moved out, he applied for permission to both the County and the HOA to rent out the apartment to the public. The County inspected the neighborhood and granted permission on the grounds that it would have no negative impact on the neighborhood, but the HOA's board disagreed and rejected the application.

**The HOA had no rules on the rental of a part of a home.** The Board based its decisions on concerns over the possible negative effects of allowing any partial rentals and the difficulty of controlling such

rentals and renters. The owner filed a complaint with the CCOC.

**The CCOC panel ruled that the covenants permitted homeowners to rent out parts of their homes provided that they first got the HOA's approval.** The board could regulate such rentals, but it could not adopt a policy that effectively banned all such rentals because such a policy conflicted with the covenants. The board had to treat each application on its own merits.

**The panel ordered the HOA to adopt rules regulating the rental of a part of the houses, and ordered the homeowner to resubmit his application pursuant to the new rules.** The panel retained jurisdiction to monitor compliance.

**The case is *Syed v. Llewellyn Fields HOA*, #24-12 (January 3, 2013.)** The hearing panel consisted of Charles Fleischer, Allen Farrar and Ralph Caudle.



## Recent Decisions of the CCOC and the Courts

### The business judgment rule:

**Unit owners may sue their association when it carelessly fails to act to preserve their legal rights against the developer.** In *Greenstein v. Council of Unit Owners of Avalon Court Six Condominium*, the Court of Special Appeals held that the business judgment rule did not protect a condo association from being sued for negligence. The board had been aware for several years of possible construction-related defects, but by the time the board got around to voting to sue the developer over the defects, the Statute of Limitations had passed and its lawsuit was dismissed. The Court ruled that the unit owners had the right to sue the association for damages resulting from the board's failure to act in a timely way. (201 Md.App. 186 (2011).)

**Business judgment rule does not protect a decision that the board had no right to make.** In *Voorhees v. Discoverly I HOA*, #05-11 (Nov. 25, 2011) a CCOC hearing panel ruled that an HOA board had no authority to spend the HOA's fund to clean up an adjacent piece of land which the HOA did not own. The HOA's governing documents stated that the HOA could spend the common funds only on the common property. The panel ordered the HOA to refund the money to its members. (Panel: Fleischer, Farrar, Whelan.)

**The board has the right to refuse to permit owner to remove shutters even if other homes have no shutters.** In *Decker v. Kingsview Village HOA*, #19-11 (Sept. 20, 2012), a homeowner removed the shutters from his house without permission, arguing that they had been poorly attached, were purely cosmetic, had been a builder option so that several other homes in the community had been built without them. The board argued that the existing architectural scheme of the community was a blend of homes with shutters and without, and that it did not have a good reason to permit these homeowners to remove their shutters and then deny approval to everyone else who wanted to do so. The board argued that, in effect, it had the right to preserve the appearance of the community as it was when it was turned over by the developer. The panel upheld the board. The panel also ordered the homeowners to pay \$8,000 to the HOA to reimburse it for its attorneys fees, since the HOA rules said that if the HOA took legal action to enforce its rules, the violator had to reimburse the HOA for its attorneys fees. (Panel: Hitchens, Farrar, Brandes.)



**Ratification: Challenges to a board's decision are mooted when the association votes to confirm the board's decision.** A CCOC hearing panel dismissed challenges to a co-op board's decision establishing the boundaries of a member's lot after the board called a general meeting to put its decision up for a vote of the membership, who then voted 2 to 1 to ratify it. The panel held that under the doctrine of "ratification", any defects in the first decision could be cured if the association, or its board, properly con-



ducted a second meeting to review the decision. The fact that the board called a special meeting to allow the membership to vote on its decision also mooted a challenge to its earlier refusal to allow a vote on the decision at a special meeting called by some of the membership. The case is *Killea & McNulty v. Cabin John Gardens, Inc.*, ##88-10/24-11 (March 8, 2012). (Panel: Dymowski, Whelan, Wilson).

### The rights of disabled residents:

**A disabled resident is entitled to a suitable reserved parking space but the association has the discretion to decide what is a reasonable response.** In *Voloshen v. Sligo Station Condominium* #30-11 (June 25, 2012) the unit owner who was physically handicapped insisted that the condo provide a handicapped parking space as regulated by law, directly in front of the entrance to her building and with a handicapped parking sign in front of it. The Condo initially refused and then relented but offered a different space, with a sign that did not show the handicapped sign but stated the space was reserved for that specific unit. The hearing panel made a lengthy review of the law. It found that complaints for reasonable accommodations for handicapped residents were within the jurisdiction of the CCOC, and that the relevant law was the Federal Fair Housing Act. The Condo had the discretion to decide just what accommodation was "reasonable." The panel upheld the board's decision as reasonable. If the space, and the sign, were placed where the resident insisted, they would have partially blocked the sidewalk. Moreover, posting a handicapped parking sign would allow other disabled drivers to use that space, which defeated the purpose of creating an accessible space for this resident, but a sign reserving the space for her unit would allow only the resident to use the space. (Panel: Fleischer, Whelan, Zajic.)



**Sensitivity to mosquito bites is not a disability requiring a reasonable accommodation.** A homeowner installed a large screened tent on her deck without permission, arguing it was necessary because she was sensitive to mosquito bites, and also that it was not a "structure" or "superstructure" that was regulated by the HOA documents. The panel disagreed. Such a tent was a "superstructure" within common meaning, since it was a structure built on top of another structure. A sensitivity to insect pests does not constitute a "life impairment" within the meaning of the Fair Housing Act. The panel ordered her to remove the tent permanently. *Discoverly I HOA v. Kim* #56-11 (Sept. 25, 2012) (panel: Stevens, Caudle, Fonoroff). (The case is on appeal.)





## How to Properly Regulate Leases in Your Community

(Continued from page 1)

**Condominium associations built after 1996 must also pay close attention to Section 11-102(a)(3) of the Maryland Condominium Act**, which states that “notwithstanding any declaration, rule, or bylaw, a developer or any other person may not be prohibited from granting a leasehold estate in an individual unit used for residential purposes.” I interpret this to mean that condominium associations may regulate rentals but cannot ban them altogether. This law will take priority over any language in the governing documents that attempts to prohibit rentals.

**Condominiums should also consider standards imposed by the FHA and the VA.** These agencies will not back loans to purchasers of condominium units if the condominium association does not meet these standards, and if the association cannot meet the standards it will be much more difficult for its members to sell their units. Currently, the FHA requires that at least 51% of the units be owner-occupied and that no single investor can own more than 10% of the units. These standards are subject to change and condominiums should consult their attorneys before seeking FHA certification.

**Associations of all kinds should include certain topics in the rules and regulations it wishes to adopt once it is assured they have the necessary authority.** One such item is to require landlords to use a lease addendum, which contains language that the tenants are subject to local laws, the Maryland HOA or Condominium Act, and to the governing documents of the association. In an age-restricted community the addendum should also include a provision stating that the tenants must



meet the age requirements of the association.

**Somewhat more controversial terms for inclusion in a lease policy and the lease addendum are those which assign certain rights to the association.** For example, the addendum could also state that if the tenants violate the governing documents or the law, the association may terminate the lease as if the association were the landlord. For such a provision to be valid, it must either be clearly authorized by the Declaration or Bylaws, or else specifically signed or initialed by the tenants, the landlord and the association. The addendum could also state that if the landlord becomes delinquent in the payment of assessments, the association may suspend the tenants' right of access to common area facilities such as the pool, reserved parking, or community center. Finally, the addendum should include a statement that if the landlord becomes delinquent in the payment of his assessments, the association can collect the rent from the tenants until the landlord's delinquency is cured. It may be necessary to amend the Declaration or Bylaws specifically to include the authority to adopt such rules.

**A condominium's lease regulation policy should comply with Section 11-113 of the Condominium Act.** That law requires the association to give notice of a violation and the right to a hearing before any penalty can be imposed. By the terms of the law, it probably does not apply to actions that the association can take to collect assessments, but it probably does apply to other enforcement actions such as revocation of privileges and terminations of leases.

**Any association wishing to act as a landlord should know the relevant State and County landlord-tenant laws.** The State law is Title 8 of the Real Property Article and the County law is Chapter 29 of the Montgomery County Code. For example, under the State law, a landlord cannot evict a tenant for breach of the lease other than nonpayment of rent unless the landlord first gives the tenant a 30 day “notice to cure.” As

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## Annual CAI Conference March 23, 2013

The Washington DC Chapter of the Community Associations Institute will hold its annual conference on March 23, 2013 at the Walter Washington Convention Center in Washington, D.C. The conference will run from 8am to 3:30pm.

The CCOC encourages members of common ownership communities to attend. This year's conference includes seminars and panel discussions on amending governing documents, FHA certification for condominiums, indoor air quality technology, legislative updates, ethics for managers and board members, and the essentials of community leadership. Those attending will also have the opportunity to meet many of the businesses that specialize in serving common ownership communities.

For more information on this year's agenda and costs, visit the Chapter's website at [www.caiddc.org](http://www.caiddc.org).



## An Heirloom Shines Again

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**The history of Forest Glen is, to some extent, the history of Montgomery County.** When the land was first colonized,



it belonged to the Calvert family, including the first Lord Baltimore. It was passed on to the Carroll family, whose

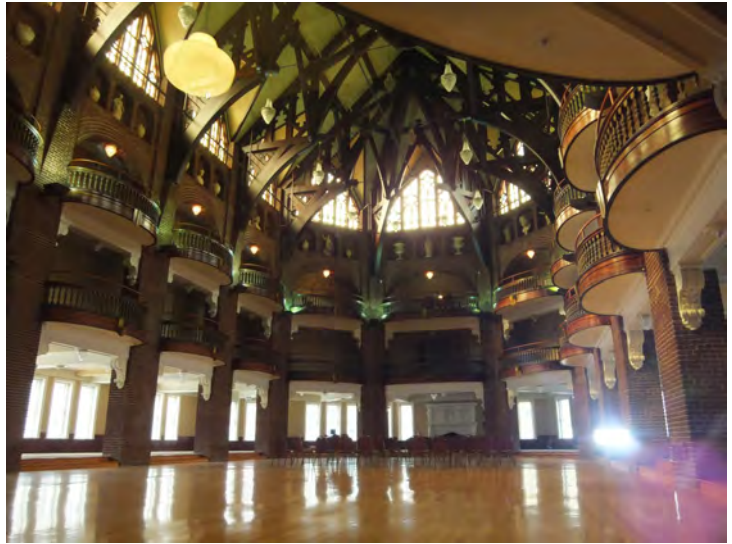
members included the first Catholic archbishop in the United States and one of the authors of the U.S. Constitution. After the B&O Railroad entered the County in 1873, a group of investors built a rustic hotel near the train tracks as a summer escape from the heat and stench of downtown D.C., calling it Ye Forest Inne. The hotel survives as the central building of the complex and the original name endures in stained glass above the entrance.

**The hotel was not a financial success, and was purchased by John and Vesta Cassedy in 1893 for transformation into The National Park Seminary.** The “seminary” was a finishing school for young women (14-21) of the country’s elite.



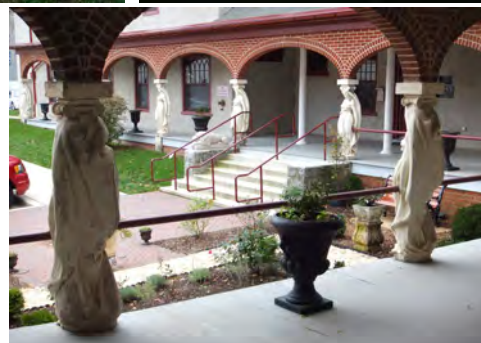
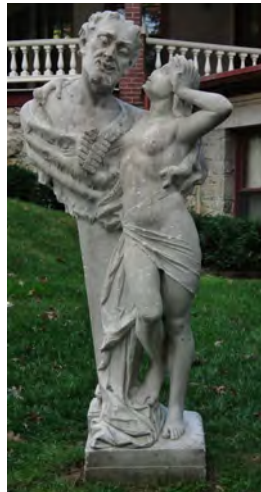
**The Cassedys had a passion for building as well as a sense of whimsy.** In the fond belief that the girls’ horizons and understanding of the world would be enlarged by their own surroundings, the Cassedys constructed clubhouses, or sororities, in various styles, including a pagoda, a Swiss chalet, a Spanish mission, an English castle, a Dutch windmill, and an Italian villa. Other buildings were constructed as Greek and Roman temples, including a theater and gymnasium. The complex included a chapel and utility buildings.

**Among the glories of the Seminary was-and is-its magnificent six-story round Gothic ballroom crowned with stained and cut glass.** For many years it was the tallest building in the County and surpassed even the new Red



Brick Courthouse in Rockville.

**The grounds were no less elaborate and unusual than the buildings.** Paths wound through the glens and forests, decorated with benches and fountains, and the grounds were famous for the numerous sculptures scattered everywhere.



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## An Heirloom Shines Again

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**All this changed abruptly in 1942.** Shortly after the U.S. entered World War II, the Army seized the Seminary as a hospital and the school was dissolved. It became an extension of Walter Reed Hospital in DC and specialized in rehabilitating amputees, and remained in active use through the Korean and Vietnam Wars. But, beginning about 1972, the complex entered a long and heartbreaking period of decline. The Army cut back on maintenance, and roofs began to leak with catastrophic results for the century-old wooden buildings. The Odeon, a classical Greek theater, burned to the ground, many buildings were vandalized and uncounted statues were stolen.



**Area citizens, and those who loved the historic site, founded Save Our Seminary (SOS), which worked tirelessly to salvage the complex.** Through their efforts, and those of then-Senator Paul Sarbanes, federal funds were made available to slow the deterioration. The County government then purchased the site and actively sought ways to preserve and renovate it. In 2003, the County brought in The Alexander Company, a Wisconsin-based developer specializing in the

restoration of historic structures, to create a modern residential community. Although the collapse of the housing market in 2008 and 2009 slowed the work, the company persisted. It began by constructing new houses and townhouses near the old buildings and then



started the difficult work of restoring and modernizing the older buildings. Many of the new buildings have been designed to blend in with and replicate the design features of their historic neighbors.

**The project is not yet complete.** Many buildings, such as the castle and the multi-unit Italian villa (seen in photo near top of page), and the colonial mansion, remain in poor condition and are for sale. Work is underway on other buildings such as the gymnasium, which



will be subdivided into condominiums and its swimming pool converted into sunken living rooms.

**The residential options are as diverse as the residences.** There are two condominium associations, one of 42 units in the restored main building and a smaller one of 8 members in a set of connected buildings that includes the former chapel. There are 90 new townhomes and 66 rental units (of which 56 are reserved for low-income residents). The rentals are owned by The Alexander Company. The governing body is the Master Association at the National Park Seminary (MAATNPS), and the board of the Master Association consists of one representative of each of the two condominium associations, 2 representatives of the townhomes, and 1 representative of the developer. The Alexander Company transferred control of the HOA board to the members in 2012 but remains an active and respected presence in the community. Abaris Realty is the association's manager.

**The common areas include the community room (below) and the**



**ballroom** (which can be rented). However, the community has little common land apart from its buildings and parking lots. It is fortunate, however, to be almost entirely surrounded by the forests and creeks of Rock Creek Park and within walking distance of Rock Creek to the west and the Forest Glen Metro station to the east.

**Brian Kildee, the master association's newly-elected president, says that the most important issue facing the board is planning for the future.** In particular, the association must plan to create a suitable reserve fund, not an easy task for an association that owns some of the oldest and most unusual buildings in the County.

**The CCOC welcomes the Forest Glen community to its family and looks forward to its completion.** Those of you who wish to learn more about the history of this area should read *Enchanted Forest Glen* (published in 1999 by Save Our Seminary) and *Images of America: Forest Glen*, (published by Arcadia Publishing Co. in 2004), and visit the website at [www.saveourseminary.org](http://www.saveourseminary.org). And be sure to stop by for a stroll! (The community sponsors an open house every fall at which some of the private units and buildings are on display, and SOS sponsors tours which you can learn about at its website.)

# How to Properly Regulate Leases in Your Community

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long as the tenant does not repeat the violation after the notice expires, the landlord cannot file for eviction.

**Lease addendums cannot be used to waive the tenants' rights under County and State laws.** Associations wishing to evict tenants of their members must do so through the Landlord and Tenant Court and follow all of the procedures for termination of leases and evictions imposed by State law.

**All lease rules should require that the leases be in writing with a copy to the association, and that landlords also provide proof that the unit is properly licensed by the County as a rental unit.** They should also require that the owner has homeowner insurance, and that the owner provide an address, phone number and email address at which he can be contacted in case of emergency and for the purpose of sending notices sent to all members. The association may want to set minimum and maximum terms for leases, and to require that the owner occupy his unit for a fixed period of time prior to renting it. Lastly, the policy should provide that the association can impose fines that are collectible in the same manner as assessments if the owner violates any provision within the lease policy (but remember the duty to provide due process before imposing any fines).

**Condominium associations should set limits on the number of rental units allowed so that they can comply with the FHA guidelines, and should adopt a process under which unit owners can apply for permission to rent their units.** The cap, or maximum limit, should be specified in the Covenants or Bylaws. The process should include creation of a waiting list for those who wish to rent their units but cannot do so because the association has reached its limit. Such a process should also include provisions allowing for exceptions and flexibility for homeowners who are forced to move because of military service, job relocation, moving to an assisted care facility, leasing by a mortgage company, and for firms that obtain possession of a unit by reason of a foreclosure or tax sale. To make such a cap fair, the policy should also set a limit on how long any unit can be rented out before its owner must reapply for permission and take his turn on the waiting list.

**Most governing documents state that the owner must lease the entire home or unit and that transient tenants are not allowed.** The association may want to consider adding a prohibition against subleasing or assignment. The governing documents might also state the maximum or minimum terms of a lease. The FHA guidelines state that leases must be at least 6 months long. I recommend that that lease policies specify the minimum and maximum duration of leases.



As you have read elsewhere in this newsletter (see page 2), the courts have taken an interest in the definition of the word “family.” It is not clear exactly what is the proper process for defining that term. I therefore recommend that, unless the Covenants already have a clear definition of the word—and most will not—the association should come up with a definition and amend the Covenants to include it. This should be done as part of the overall plan to amend the governing documents so as to grant the association sufficient authority to regulate the rental use of its homes and units.

**In a condominium association where parking spaces, storage units and garages are described as part of the units, and not as limited or general common elements, the association should also consider regulating the rental of such spaces.**

It is common to limit their rental to other members or residents of the association, and to require that the lease of such spaces be simultaneous with the lease of the unit and to the same tenant.



**Associations may have to notify and obtain the consent of the mortgagees of the homes and units if they wish to amend their Covenants and Bylaws.** The association's documents will say when such approval is required.

**The need to regulate rentals is increasingly important due to the new FHA lending rules.** In particular, the FHA's insistence on a cap on the total percentage of rental units in condominiums is likely to force many of those associations to amend their bylaws, if not their covenants. If they must do so, it is a good opportunity to consider giving themselves clear authority to regulate leases in other ways for the overall benefit of the association.

**Even HOAs and cooperatives should consider adopting rental regulations.** The recent CCOC decision in *Syed v. Llewellyn Fields* (see page 2) shows what can happen to an HOA that wants to regulate rentals but has no clear written policy on the subject. Likewise, the court's decision in *South Kaywood Community Association v. Long* (also on page 2), suggests that associations may need to amend their governing documents to define the crucial word “family.”

**As you can see, the topic is a complex one.** Associations cannot restrict their members' property rights, including the right to rent out a home or unit, without the clear authority to do so in the Covenants or Bylaws, nor should they run afoul of the relevant laws on landlord-tenant relations. And there are many different options for such regulation. I strongly recommend that associations consult and work closely with their attorneys on this difficult issue.

(Nicole Williams, Esq., is a Volunteer Panel Chair for the CCOC and a partner in the Law Firm of Hileman & Williams, PC. The views she expresses are hers and do not necessarily represent the CCOC.)



## CCOC Annual Forum Reviews New Towing Laws, Hearing Procedures

By Janet Wilson, Commissioner

The CCOC hosted its Annual Forum Saturday, November 17<sup>th</sup> at the King Farm Community Center with more than 100 residents in attendance. Chairperson Elizabeth Molloy reviewed the CCOC's accomplishments of the preceding year, which included a new publication summarizing and organizing all the CCOC's formal decisions since 1991 (see page 11), and disclosed the Commission's plans to increase its educational efforts in the coming year by presenting training sessions and creating short videos on major topics. She emphasized the need for members of common ownership communities to participate in their association's affairs and on its board of directors, and reminded them that they can also participate in the CCOC itself by applying for vacant positions. She noted that the County Executive solicits applications every December for the CCOC.

State Delegate James Gilchrist (right) discussed a variety of legislative issues and County Councilmember Phil Andrews participated with him in an extended question and answer period touching on hot topics such as the new State law on parking and towing restrictions.



A mock hearing was staged to provide insights into the proceedings as well as to illustrate that often-times, the outcome of a hearing is not "cut and dried" based on evidence presented. Commissioners Jim Coyle, Arthur Dubin, David Weinstein and Elaine Kabakoff portrayed homeowners and witnesses on each side of the complaint while Jason Fisher and Jack McCabe portrayed the HOA's attorney and the panel chair, respectively, with myself and David Gardner as the other members of the hearing panel. The audience listened raptly and at times, we had to remind ourselves that this was not an actual hearing.

Following the hearing, several experts presented advice on the CCOC dispute resolution process and how to use it effectively. Rand Fishbein, a homeowner who won his CCOC dispute and who now is on the board of the Maryland Homeowners Association (MHA) pointed out some of the hurdles facing homeowners who are not represented by attorneys. He recommended that the CCOC dispute resolution process be adopted in other jurisdictions but he also suggested that the process should be improved to make it easier for home owners to defend themselves, and he summarized MHA's agenda for 2013.

Michael Lang, an experienced mediator and former adjunct law school professor, discussed the merits of mediation, while David Gardner, an attorney who frequently represents homeowners, gave advice on how lay persons can make better cases to the CCOC. Their remarks are summarized on the next page.

Because of the audience's interest in Mr. Gilchrist's speech and especially his remarks on the new towing law, there was not enough time for all the members of the panel on the mock hearing to make their own presentations. The CCOC nonetheless appreciates the volunteer participation of attorneys John McCabe and Jason Fisher in the mock hearing and on the discussion panel



Jane Wilson, Jack McCabe, David Gardner

## CAI Chapter Announces College Scholarship Program

The Washington Metropolitan Chapter of the Community Associations Institute has announced a scholarship program for area high school students who plan to enroll in four-year colleges, community colleges or trade schools. The program awards one scholarship of at least \$500 and free membership in the CAI for the best essay on "Benefits of Living in a Community Association." The winning essay will also be published in the Chapter's monthly magazine, *Quorum*. For more information, visit the [News & Services](#) section of the Chapter's website, [www.caide.org](http://www.caide.org).





# Advice for Presenting and Resolving Your Dispute Against Your Association

By David Gardner, Esq.

**Homeowners have at least 4 alternatives for resolving their disputes with their associations** and they should learn the unique characteristics of each and how to use them most effectively. The alternatives are: *negotiation, mediation, CCOC* and the *courts*.

**Negotiation means using the process created by your community's own rules.** The CCOC requires you follow those rules before you file a complaint with the CCOC.

**Always reply to any notices the association sends you claiming you violated a rule.** If you can correct the violation, do so and inform the association. If you disagree, *ask for a hearing* with the board of directors. Review the association's file on the violation, read your association's governing documents, gather your own evidence and photographs and witnesses. Be prepared to present your evidence and witnesses and to cross-examine the association's witnesses.

**Narrow the issues for the hearing.** The board's time is limited and valuable. Keep your presentation focused and to the point. If your situation is different from others, explain why, because boards are always worried about establishing a precedent that can be used against them later on.

**Be pleasant and do not make the dispute a personal one.** The board is more likely to want to work with you if you don't attack its motives or character.

**Mediation is the process of meeting with the other party with the help of an impartial third party.** The CCOC encourages mediation and offers mediators if both sides agree to it. One advantage of mediation is that it allows discussion of all relevant issues, even those that the CCOC or a court might not be able to hear or resolve, and it permits agreements that are broader or more creative than the CCOC or a court could order. Finally, mediation gives you a chance to learn about the other side's case and to understand it better.

**CCOC offers an administrative hearing process that is more infor-**

**mal and less expensive than the court process.** CCOC cases are generally resolved more quickly, and the hearing panel is composed of experts in the field who are deeply concerned about the issues. The rules of evidence are less formal as well. CCOC panels not only decide cases but they issue detailed explanations of why they decide a dispute in a certain way.

**One important advantage of a CCOC dispute is the existence of the "automatic stay"**—if a member files a complaint the association cannot enforce its decision until the CCOC rules. In addition the CCOC staff can enforce any order issued by the CCOC, usually at no cost to the winning party.

**The last alternative is the courts.** Court cases can take up to a year before they are resolved, the formal rules of evidence apply, and the judges are often hard on pro-se parties. In addition, many judges give the impression that common ownership disputes are not important. They usually do not issue written decisions explaining their reasoning in any detail. *The court process can cost twice as much as the CCOC process.*

**Four tips for preparing for a CCOC hearing:** first, *streamline* your case by focusing on the issues in the complaint and avoid other issues. Second, *organize* your case, make copies of your exhibits, read the governing documents and all the exhibits of both sides. Third, *prepare a hearing notebook* or binder that includes Commission Exhibit 1, the governing documents of the association, copies of new evidence you wish to use, notes on your opening statement, questions for your witnesses and the other side's witnesses, and notes for a closing argument. Fourth and final, *don't mix your testimony with your opening or closing arguments.* You can only present your testimony under oath and at a given time and your testimony is not the time for arguing. Opening and closing arguments are only for summarizing the facts of your case and dealing with the other side's case, not for trying to provide more facts and evidence.

## Why Mediate?

By Michael Lang, Esq.

**Rarely do parties in CCOC disputes approach the issues in the spirit of a dispassionate search for truth.** Rather, they demand "justice," which usually means "I win, you lose." A mediator can often help parties move from non-negotiable claims for conquest toward the reality of resolution.

**Mediators don't take sides, give legal advice, or tell the parties what to do.** Instead, they listen to what everyone has to say and then help the parties to discuss issues and explore possible solutions. Many mediators take on the role of educator and reality agent. In private sessions, they may ask parties about the strengths and weaknesses of their cases, and help them focus on practical realities such as evaluating whether the CCOC is likely to see things *entirely* their way. Under CCOC rules, a mediator is authorized to show parties how the CCOC ruled in other cases, which helps them to be more realistic about their chances of achieving "total victory." When parties indicate a willingness to settle, a mediator can assist in the formulation and presentation of the proposals to the other side.

**Resolution through mediation avoids the risks and costs of litigation.** Parties often see only their own positions and fail to recognize how risky, inefficient and expensive litigation can be, even before the CCOC. In one recent case, a homeowner who removed shutters from his home was ordered not only to replace them, but to reimburse his HOA for \$8000 in legal fees. In another bitterly disputed case, *each party*—the "winner" as well as the loser—wound up with legal bills exceeding \$70,000, demonstrating once again that sometimes the cost of "winning" may exceed the value of the "victory."



## Useful County Phone Numbers for Common Ownership Communities

Most County Government agencies may now be reached by phone by dialing "311" during ordinary business hours. The operator will then refer the caller to the proper agency. This service includes non-emergency Police services such as reporting abandoned cars and community outreach, Libraries, the Circuit Court, Landlord-Tenant Affairs, Housing Code Enforcement, the Office of the County Executive, Cable TV regulation, the Department of Permitting Services and the Department of Transportation.

Some County agencies may be called directly or through 311, including:

Office of Consumer Protection	240-777-3636	(email: <a href="mailto:ConsumerProtection@montgomerycountymd.gov">ConsumerProtection@montgomerycountymd.gov</a> )
CCOC	240-777-3766	(email: <a href="mailto:ccoc@montgomerycountymd.gov">ccoc@montgomerycountymd.gov</a> )
County Council	240-777-7900	
Parks & Planning Commission		
Planning Board	301-495-4605	
Parks Headquarters	301-495-2595	

City of Rockville: residents should still call their City agencies directly.

Emergency services: 911

For more information on the 311 system or to search for agencies by computer, go to:

[Http://www3.montgomerycountymd.gov/331/Home.asp](http://www3.montgomerycountymd.gov/331/Home.asp)

## FY 2013 Commission Participants (as of February, 2013)

### \*Residents from Condominiums/Homeowner Associations:\*

Elizabeth Molloy, Chairperson

Jim Coyle

Allen Farrar

Jan Wilson

Bruce Fonoroff

Elayne Kabakoff

David Weinstein

Ken Zajic

### \*Professionals Associated with Common Ownership Communities:\*

Arthur Dubin, Vice-chairperson

Gwen Henderson

Helen Whelan

Mitchell Alkon

Richard Brandes

Ralph Caudle

Thomas Stone

### County Attorney's Office\*

Walter Wilson, Associate County Attorney

### \*Volunteer Panel Chairs:\*

Christopher Hitchens, Esq.

John F. McCabe, Jr., Esq.

Dinah Stevens, Esq.

John Sample, Esq.

Douglas Shontz, Esq.

Julianne Dymowski, Esq.

Corinne Rosen, Esq.

Ursula Burgess, Esq.

Greg Friedman, Esq.

Charles Fleischer, Esq.

Nicole Williams, Esq.

Rachel Browder, Esq.

### \*Commission Staff\*

Ralph Vines, Administrator

Peter Drymalski, Deputy Assistant Editor



## CCOC Releases the *Staff's Guide to the Procedures and Decisions of the CCOC*, All CCOC Decisions from 1991 to 2012 Now Online

The CCOC is pleased to announce that all its decisions from 1991 through 2012 are now online at its website. In addition, short summaries of almost all the decisions have also been posted to make it easier to understand the meaning of each decision.

In addition, the CCOC has published a *Guide to the Procedures and Decisions of the CCOC*, which is also available on its website. The *Guide*, prepared by the CCOC's staff, is intended to be used with the online decisions.

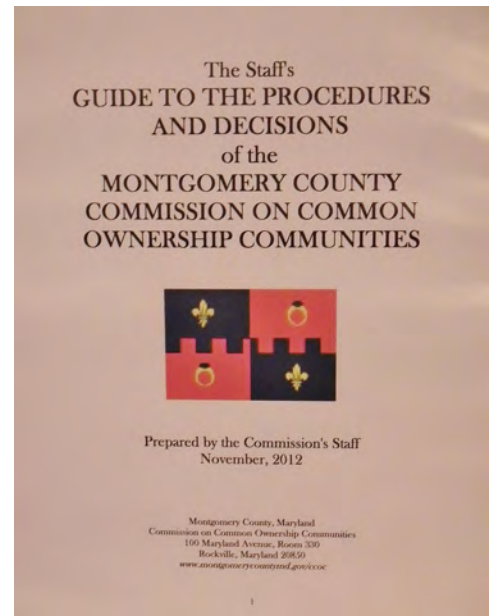
The *Guide* reviews the decisions by organizing them into topics. For example, there are sections reviewing decisions on disputes involving elections, basketball courts, sheds, fences, and access to records.

The reader can quickly find the topic of interest by using the Table of Contents.

The *Guide* also contains appendices that discuss the "business judgment" rule and which list the most relevant laws affecting common ownership communities. The CCOC believes that this is the first such publication freely available to the public which reviews one jurisdiction's legal rulings on common ownership community disputes.

Hard copies of the *Guide* are available for \$15 each. To order a copy, call 240-777-3636 or email a request to the staff. (See page 10 for the email address.)

The staff expects to update the *Guide* annually.



## Annual Notice Reminder

County law requires that all associations send a notice every year to all their members to inform them of the CCOC and how it can assist them. There is no particular way the reminder must be sent—it can be part of a newsletter or an attachment to another mailing. The CCOC staff has developed two forms that associations can use as examples—a short form (half a page) and a longer form (full page). To obtain copies of both, email the staff at: [ccoc@montgomerycountymd.gov](mailto:ccoc@montgomerycountymd.gov).



## Keep in Touch with eSubscribe

By signing up for the CCOC's email subscription service, you can receive free announcements and newsletters from us. The direct link is:

<https://ext01.montgomerycountymd.gov/entp/s1p/esubpublic/newssubscriber.do> The CCOC is listed under the Office of Consumer Protection.

Or, you can go to [www.montgomerycountymd.gov](http://www.montgomerycountymd.gov), click on "I Want To...", then "eSubscription," then "Create an Account," (or "Update an Account" if you already have one). The CCOC is listed under the Office of Consumer Protection, and you might want to sign up for both lists.



## CCOC Elects Molloy, Dubin as Officers for 2013

The CCOC is pleased to announce that Elizabeth Molloy has been re-elected as Chairperson, and that Arthur Dubin has been elected as Vice-Chairperson for 2013. Mr. Dubin, the president of ZALCO Realty, will replace Gwen Henderson, who is retiring to devote more time to her realtor association.



MONTGOMERY COUNTY GOVERNMENT  
COMMISSION ON COMMON  
OWNERSHIP COMMUNITIES  
100 MARYLAND AVE., ROOM 330  
ROCKVILLE, MARYLAND 20850

## Other County Agencies Offering Complaint Assistance

In addition to the CCOC, there are several other County agencies that offer free assistance to our communities—and their members—for dealing with dangerous and unsanitary conditions and public nuisances.

One of these resources is the *Office of Cable and Broadband Services*. This office will inspect construction and exterior cable TV wiring issues (such as cables not properly buried or which are carelessly draped over balconies and walls). The Cable Office also handles complaints about the three County-franchised Cable TV providers: Comcast, RCN and Verizon FIOS.



Another useful, and frequently overlooked, agency is the *Office of Housing Code Enforcement in the Department of Housing and Community Affairs*. This office will respond to complaints about unsafe and unsanitary conditions, such as broken windows and screens, collapsing fences and sheds, flaking paint, tall grass and weeds, pest infestations and many other problems. Associations can file complaints against their members who are not properly maintaining their properties, and residents of associations can file complaints against their neighbors for the same reason, and against their associations when the association is not properly maintaining the common areas.



Many residents report problems with loud noises coming from other units in their building. The Department of Environmental Protection has a Noise Abatement Office, which will accept complaints about excessive noise caused by mechanical equipment or amplifiers, such as radios, tvs, and stereos. (However, it does not have authority over excessive noises such as loud voices, slamming doors, etc., which are not created by amplifiers or machinery.)



Rat infestations in private yards and other outdoor areas can be reported to the *Office of Licensure and Regulatory Services of the Department of Health and Human Services*. (Rodent infestation inside multi-unit buildings should be reported to the Office of Housing Code Enforcement.)



All these agencies can be reached by calling the County's "311" line and asking for the proper agency, or by visiting their web pages. The main County web site address is [www.montgomerycountymd.gov](http://www.montgomerycountymd.gov).